

Constitutional and Statutory Goals

The following information summarizes the relevant constitutional and statutory goals regarding general environmental protection in Montana. The information provided is broad, and includes not only directives to protect the environment, but also directives that may assist in discussing and defining appropriate "limits" to protection (e.g. property rights and public rights).

Montana Constitution

- Preamble

"We the people . . . grateful . . . for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations . . ."

- Article II

"All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, . . . acquiring, possessing and protecting property, and seeking their safety, health, and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities."

Related Guidance: Section 3 of the constitutional transition schedule notes that rights added in the 1972 constitutional revision (e.g. right to a clean and healthful environment) are not retroactive.)

- section 8

"The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law."

- section 17

"No person shall be deprived of life, liberty, or property without due process of law."

- section 29

"Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner . . ."

- section 34

"The enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people."

Article IX

- section 1

"(1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.

(2) The legislature shall provide for the administration and enforcement of this duty.

(3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources."

-section 2

"(1) All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed."

- section 3

"(1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.

(2) The use of all water . . . appropriated for . . . beneficial use, the right of way over the lands of others for [improvements] necessarily used in connection therewith, and the sites for reservoirs . . . shall be held to be a public use.

(3) All . . . waters . . . are subject to appropriation for beneficial uses as provided by law.

(4) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records."

- section 4

"The legislature shall provide for the identification, acquisition, restoration, enhancement, preservation, and administration of scenic, historic, archaeologic, scientific, cultural, and recreational areas, sites, records and objects, and for their use and enjoyment by the people."

Article X

- section 1

"(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

Article XII

- section 1

"(1) The legislature shall provide for a Department of Agriculture and enact laws and provide appropriations to protect, enhance, and develop all agriculture."

Montana Code Annotated (MCA)

Streams

23-2-302, MCA

From the uses and limitations specified in this section, the intent appears to be to provide for public use of most river surface waters, to set limitations on that use, to protect other waters from public use, protect big game from being hunted from the water (except when authorized), and to protect property owners from encroachment.

Responsible Agency: Department of Fish Wildlife and Parks

Cesspool, Septic Tanks, etc.

37-41-1, MCA

It is assumed the purpose of this part is to protect public health.

Responsible Agency: Department of Environmental Quality

Water Treatment Plants

37-42-101, MCA

"It is declared that the health and welfare of Montana citizens are jeopardized by persons not properly qualified to operate the water supply systems and that Montana's state waters are endangered by persons not properly qualified to operate the wastewater treatment plants."

Responsible Agency: Department of Environmental Quality

Water Well Contractors

37-43-101, MCA

"It is the purpose of this chapter to reduce and minimize the waste and contamination of ground water resources within this state by reasonable regulation and licensing of drillers or makers of water wells and monitoring wells and to protect the health and general welfare by providing a means for the development of the natural resource of underground water in an orderly, sanitary, and reasonable manner."

Responsible Agency: Department of Natural Resources and Conservation (Board of Water Well Contractors)

Environmental Protection

75-1-102, MCA

"The purpose . . . is to declare a state policy which will encourage productive and enjoyable harmony between humans and their environment, to protect the right to use and enjoy private property free of undue government regulation, to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans, to enrich the understanding of the ecological systems and natural resources important to the state, and to establish an environmental quality council.

75-1-103, MCA

"(1) The legislature . . . declares that it is the continuing policy of the state of Montana, in cooperation with the federal government, local governments, and other concerned public

and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which humans and nature can coexist in productive harmony, to recognize the right to use and enjoy private property free of undue government regulation, and to fulfill the social, economic, and other requirements of present and future generations of Montanans.

(2) In order to carry out the policy set forth in parts 1 through 3, it is the continuing responsibility of the state of Montana to use all practicable means consistent with other essential considerations of state policy to improve and coordinate state plans, functions, programs, and resources so that the state may:

- (a) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
 - (b) ensure for all Montanans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
 - (c) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
 - (d) protect the right to use and enjoy private property free of undue government regulation;
 - (e) preserve important historic, cultural, and natural aspects of our unique heritage and maintain, wherever possible, an environment that supports diversity and variety of individual choice;
 - (f) achieve a balance between population and resource use that will permit high standards of living and a wide sharing of life's amenities; and
 - (g) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.
- (3) The legislature recognizes that each person is entitled to a healthful environment, that each person is entitled to use and enjoy that person's private property free of undue government regulation, and that each person has a responsibility to contribute to the preservation and enhancement of the environment."

75-1-201, MCA

"(1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) all agencies of the state, except the legislature and except as provided in subsection (2), shall:

(I) use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking that may have an impact on the human environment;

(ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking, along with economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of the human environment a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects that cannot be avoided if the proposal is implemented;

(C) alternatives to the proposed action;

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have been analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity; and

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented;

(v) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources;

(vi) recognize the national and long-range character of environmental problems and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of the world environment;

(vii) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(viii) initiate and use ecological information in the planning and development of resource-oriented projects; and

(ix) assist the environmental quality council established by 5-16-101; and

(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved. The responsible state official shall also consult with and obtain comments from any state agency with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must be made available to the governor, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes. . . ."

Responsible Agencies: Any Agency that conducts actions pursuant to the Montana Environmental Policy Act (MEPA).

75-1-324, MCA

"The environmental quality council shall:

- (1) gather timely and authoritative information concerning the conditions and trends in the quality of the environment, both current and prospective, analyze and interpret the information for the purpose of determining whether the conditions and trends are interfering or are likely to interfere with the achievement of the policy set forth in 75-1-103, and compile and submit to the governor and the legislature studies relating to the conditions and trends;
- (2) review and appraise the various programs and activities of the state agencies, in the light of the policy set forth in 75-1-103, for the purpose of determining the extent to which the programs and activities are contributing to the achievement of the policy and make recommendations to the governor and the legislature with respect to the policy;

- (3) develop and recommend to the governor and the legislature state policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the state;
- (4) conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;
- (5) document and define changes in the natural environment, including the plant and animal systems, and accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;
- (6) make and furnish studies, reports on studies, and recommendations with respect to matters of policy and legislation as the legislature requests;
- (7) analyze legislative proposals in clearly environmental areas and in other fields where legislation might have environmental consequences and assist in preparation of reports for use by legislative committees, administrative agencies, and the public;
- (8) consult with and assist legislators who are preparing environmental legislation to clarify any deficiencies or potential conflicts with an overall ecologic plan; and
- (9) review and evaluate operating programs in the environmental field in the several agencies to identify actual or potential conflicts, both among the activities and with a general ecologic perspective, and suggest legislation to remedy the situations."

Responsible Agency: Environmental Quality Council

75-1-1101, MCA

This section sets up the state environmental contingency account, controlled by the governor, to (a) support renewable resource development under certain circumstances, and (b) to preserve renewable resources under certain emergency circumstances.

Responsible Agency: Governor's Office

Air Quality

75-2-102, MCA

"(1) It is hereby declared to be the public policy of this state and the purpose of this chapter to achieve and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state, and facilitate the enjoyment of the natural attractions of this state.

(2) It is also declared that local and regional air pollution control programs are to be supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.

(3) To these ends it is the purpose of this chapter to:

- (a) provide for a coordinated statewide program of air pollution prevention, abatement, and control;
- (b) provide for an appropriate distribution of responsibilities among the state and local units of government;

- (c) facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and
- (d) provide a framework within which all values may be balanced in the public interest."

Responsible Agency: Department of Environmental Quality

Asbestos

75-2-501, MCA et seq.

Although not specifically stated, staff assumes the certification program described in this part is to protect public health and safety.

Responsible Agency: Department of Environmental Quality

Nuclear Regulation

75-3-101, MCA

"It is the policy of the state of Montana, in furtherance of its responsibility to protect the public health and safety, to:

- (1) institute and maintain a regulatory program for sources of ionizing radiation so as to provide, for compatibility with the standards and regulatory programs of the federal government, a single effective system of regulation within the state and a system consistent insofar as possible with those of other states; and
- (2) institute and maintain a program to permit development and utilization of sources of ionizing radiation for peaceful purposes consistent with the health and safety of the public."

75-3-102, MCA

"It is the purpose of this chapter to provide a program:

- (1) of effective regulation of sources of ionizing radiation for the protection of the occupational and public health and safety;
- (2) to promote an orderly regulatory pattern within the state, among the states, and between the federal government and the state and facilitate intergovernmental cooperation with respect to use and regulation of sources of ionizing radiation to the end that duplication of regulation may be minimized;
- (3) to establish procedures for assumption and performance of certain regulatory responsibilities with respect to byproduct, source, and special nuclear materials; and
- (4) to permit maximum utilization of sources of ionizing radiation consistent with the health and safety of the public."

Responsible Agency: Department of Environmental Quality

Water Quality

75-5-101, MCA

"It is the public policy of this state to:

- (1) conserve water by protecting, maintaining, and improving the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, and other beneficial uses;
- (2) provide a comprehensive program for the prevention, abatement, and control of water pollution."

"(1) A purpose of this chapter is to provide additional and cumulative remedies to prevent, abate, and control the pollution of state waters.

(2) This chapter does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does this chapter or an act done under it estop the state or a municipality or person, as owner of water rights or otherwise, in the exercise of his rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution."

Responsible Agency: Department of Environmental Quality

Public Water Supply

75-6-101, MCA

"It is the public policy of this state to protect, maintain, and improve the quality and potability of water for public water supplies and domestic uses."

Responsible Agency: Department of Environmental Quality

Solid Waste

75-10-101, MCA

"The purpose of this part is to encourage the good management of solid waste and the conservation of natural resources through the promotion or development of systems to collect, separate, reclaim, recycle, and dispose of solid waste for energy production purposes where economically feasible and to provide a coordinated state solid waste and resource recovery plan."

75-10-102, MCA

"(1) To implement this part, the following are declared to be public policies of this state:

- (a) Maximum recycling from solid waste is necessary to protect the public health, welfare, and quality of the natural environment.
- (b) Solid waste management systems shall be developed, financed, planned, designed, constructed, and operated for the benefit of the people of this state.
- (c) Private industry is to be utilized to the maximum extent possible in planning, designing, managing, constructing, operating, manufacturing, and marketing functions related to solid waste management systems.
- (d) Local governments shall retain primary responsibility for adequate solid waste management with the state preserving those functions necessary to assure effective solid waste management systems throughout the state.

- (e) Costs for the management and regulation of solid waste management systems should be charged to those persons generating solid waste in order to encourage the reduction of the solid waste stream.
- (f) Encouragement and support be given to individuals and municipalities to separate solid waste at its source in order to maximize the value of such wastes for reuse.
- (g) The state shall provide technical advisory assistance to local governments and other affected persons in the planning, developing, financing, and implementation of solid waste management systems.
- (h) Actions and activities performed or carried out by persons and their contractors in accordance with this part shall be in conformity with the state solid waste plan.
- (I) When licensing a solid waste management system, the department shall consult with units of local government that have jurisdiction over the area encompassing the proposed system. . . ."

Responsible Agency: Department of Environmental Quality

Hazardous Waste

75-10-402, MCA

"(1) The legislature finds that the safe and proper management of hazardous wastes and used oil, the permitting of hazardous waste facilities, and the siting of facilities are matters for statewide regulation and are environmental issues that should properly be addressed and controlled by the state rather than by the federal government.

(2) It is the purpose of this part and it is the policy of this state to protect the public health and safety, the health of living organisms, and the environment from the effects of the improper, inadequate, or unsound management of hazardous wastes and used oil; to establish a program of regulation over used oil and the generation, storage, transportation, treatment, and disposal of hazardous wastes; to assure the safe and adequate management of hazardous wastes and used oil within this state; and to authorize the department to adopt, administer, and enforce a hazardous waste program pursuant to the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 - 6987), as amended.

(3) The legislature also finds that petroleum products and hazardous substances stored in underground tanks are a separate category of substances that are regulated under the federal Resource Conservation and Recovery Act of 1976, as amended, and must be addressed and controlled properly by the state under the Montana Hazardous Waste and Underground Storage Tank Act.

It is the purpose of this part to authorize the department to establish, administer, and enforce an underground storage tank leak prevention program for these regulated substances. The department may use the authority provided in 75-10-413 through 75-10-417 and other appropriate authority provided by law to remedy violations of underground storage tank requirements established under this part."

Underground Storage Tanks

75-10-409, MCA

The purpose of this program relates to the purposes of the hazardous waste program noted above. Staff assumes the purposes include protection of ground water quality.

Responsible Agency: Department of Environmental Quality

Motor Vehicle Recycling and Disposal

75-10-5, MCA

Staff assumes the purposes for this part relate to preserving the beauty of the state (preamble to the constitution) and the public's right to a clean and healthful environment (Article II, sec. 3, state constitution). See also the section on **Junkyards**, page 13.

Responsible Agency: Department of Environmental Quality

Hazardous Waste Disposal

75-10-601, MCA

"The legislature finds that the existence of hazardous substances and contaminants in the environment and hazardous waste disposal sites poses a significant health hazard through potential and actual contamination of the environment. This part is therefore enacted to protect the public health, safety, and welfare through cooperation with the federal government under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to provide for the disposal and control of such hazardous substances and contaminants in a safe and environmentally sound manner."

Responsible Agency: Department of Environmental Quality

Megalandfill Siting

75-10-902, MCA

"(1) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations, to protect the environment from degradation and prevent unreasonable depletion and degradation of natural resources, and to provide for administration and enforcement to attain these objectives. (2) The construction of solid waste facilities that dispose of over 200,000 tons of waste a year (megalandfills) may be necessary to meet increasing state and national needs for solid waste disposal capacity. However, due to the volume of waste processed, megalandfills may adversely affect the environment, surrounding communities, and the welfare of the citizens of this state.

Therefore, it is necessary to ensure that the location, construction, and operation of megalandfills will produce minimal adverse effects on the environment and upon the citizens of this state by providing that a megalandfill may not be constructed or operated within this state without a certificate of site acceptability pursuant to 75-10-916 and a license to operate acquired pursuant to 75-10-221 and 75-10-933."

Responsible Agency: Department of Environmental Quality

Junkyards

75-15-201, MCA

The intent of this section is described as ". . . for the purposes of promoting the public safety, health, and welfare and the convenience and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways"

Responsible Agency: Department of Environmental Quality

Energy -- Major Facilities

75-20-102, MCA

This section repeats the constitutional requirement to "maintain and improve a clean and healthful environment for present and future generations, to protect the environmental life-support system from degradation and prevent unreasonable depletion and degradation of natural resources, and to provide for administration and enforcement to attain these objectives." It goes on to state that "the construction of additional power or energy conversion facilities may be necessary to meet the increasing need for electricity, energy, and other products Therefore, it is necessary to ensure that the location, construction, and operation of power and energy conversion facilities will produce minimal adverse effects on the environment and upon the citizens of this state by providing that a power or energy conversion facility may not be constructed or operated within this state without a certificate of environmental compatibility and public need acquired pursuant to this chapter."

Responsible Agency: Department of Environmental Quality

Local Subdivision Regulation

76-3-102, MCA

"It is the purpose of this chapter to:

- (1) promote the public health, safety, and general welfare by regulating the subdivision of land;
- (2) prevent overcrowding of land;
- (3) lessen congestion in the streets and highways;
- (4) provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements;
- (5) require development in harmony with the natural environment;
- (6) protect the rights of property owners; and
- (7) require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey."

Responsible Jurisdiction: Local Government

State Subdivision Regulation

76-4-101, MCA

"It is the public policy of this state to extend present laws controlling water supply, sewage disposal, and solid waste disposal to include individual wells affected by adjoining sewage disposal and individual sewage systems to protect the quality and potability of water for public water supplies and domestic uses and to protect the quality of water for other beneficial uses, including uses relating to agriculture, industry, recreation, and wildlife."

Related Guidance: For this part, "subdivisions" are "parcels of less than 20 acres which have been created by a division of land" Other provisions in this chapter relate to the regulation of out of state subdivision sales for the prevention of consumer fraud.

Responsible Agency: Department of Environmental Quality

Forestry

76-13-101, MCA

"(1) It is the purpose . . . to provide for the protection and conservation of forest resources, range, and water; the regulation of streamflow; and the prevention of soil erosion. It is further the purpose . . . to more adequately promote and facilitate the cooperation, financial and otherwise, between the state and public and private agencies which are associated in such work.

(2) To achieve the conservation of forest and watershed resources, the legislature encourages the use of best management practices in timber sale planning, associated road construction and reconstruction, timber harvesting, site preparation, and related activities and establishes a process to ensure that information on best management practices is provided to owners and operators engaged in forest practices on private land."

Responsible Agency: Department of Natural Resources and Conservation

Control of Forest Diseases and Insect Pests

76-13-301, MCA

"It is the public policy of the state to protect and preserve forest resources from destruction by forest insect pests and tree diseases, to protect the forests and watersheds of Montana, to enhance the production of forests, to promote the stability of forest industry, to protect the recreational values of the forest, and to independently and through cooperation with the federal government and private forest landowners adopt measures to control, suppress, and eradicate outbreaks of forest insect pests and tree diseases."

Related Guidance: Section 76-13-102 defines "conservation" as "the protection and wise use of forest, forest range, forest water, and forest soil resources in keeping with the common welfare of the people of this state."

Responsible Agency: Department of Natural Resources and Conservation

Control of Timber Slash and Debris**76-13-402, MCA**

This section includes fire hazard reduction as a component of "progressive forest practices."

Responsible Agency: Department of Natural Resources and Conservation

Timber Slash and Debris**76-13-402, MCA**

Fire hazard reduction is the purpose of this program. Compliance can consist of "taking protective measures to minimize loss without abating the hazard."

Responsible Agency: Department of Natural Resources and Conservation

Portable Sawmills**76-13-507, MCA**

It appears a primary intent of this part is also the reduction of fire hazard.

Responsible Agency: Department of Natural Resources and Conservation

Timber Best Management Practices

The purpose for this program appears to be the intent noted under 76-13-101 on page 14.

Responsible Agency: Department of Natural Resources and Conservation

Conservation Districts**76-15-102, MCA**

"It is hereby declared to be the policy of the legislature to provide for the conservation of soil and soil resources of this state, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water . . ."

Related Guidance: Section 76-15-102 notes the benefits of such conservation to be: ". . . to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state."

Responsible Agency: Department of Natural Resources and Conservation

Grazing Districts**76-16-102, MCA**

"The purpose of this chapter is to provide for the conservation, protection, restoration, and proper utilization of grass, forage, and range resources of the state of Montana, to

provide for the incorporation of cooperative nonprofit grazing districts, to provide a means of cooperation with . . . any other governmental agency or department having jurisdiction . . . , to permit the setting up of a form of grazing administration which will aid in the unification or control of all grazing lands within the state where the ownership is diverse and the lands intermingled, and to provide for the stabilization of the livestock industry and the protection of dependent commensurate ranch properties as defined herein."

Related Guidance: Section 75-16-104 states, "The department shall assist in carrying out the purposes of this chapter, act in an advisory capacity with the boards of County commissioners, and supervise and coordinate the formation and operation of districts that may be incorporated under this chapter."

Responsible Agency: Department of Natural Resources and Conservation

State Lands

77-5-101, MCA

State forest lands are for the purposes of production (growing and harvesting timber) and/or watershed protection.

Related Guidance: Title 77, Chapter 5 deals with timber management on state land. Section 77-5-206 requires the department to "supervise the management of timber before it is cut and secure the most complete utilization of all forest products consistent with the current forest management practices" Section 77-5-206 discusses the salvage timber program that provides for the "timely . . . logging of dead or dying timber or timber that is threatened by insects, disease, fire, or windthrow"

Responsible Agency: Department of Natural Resources and Conservation

Streamside Management Zone

77-5-301, MCA

"(1) The legislature finds that the streamside management zone:

- (a) acts as an effective sediment filter to maintain water quality;
- (b) provides shade to regulate stream temperature;
- (c) supports diverse and productive aquatic and terrestrial riparian habitats;
- (d) protects the stream channel and banks;
- (e) provides large, woody debris that is eventually recruited into a stream to maintain riffles, pools, and other elements of channel structure; and
- (f) promotes floodplain stability.

(2) The legislature further finds that maintaining the integrity of forest streams is crucial to the quality and quantity of water available to Montanans for domestic, agricultural, industrial, and recreational use.

(3) The legislature further finds that forest streams are highly susceptible to impacts from land development and that in many cases forest practices in streamside zones in Montana are causing excessive and unnecessary damage to the banks, beds, and protective vegetation of forest streams.

- (4) The legislature further finds that, through careful management in the streamside zone, owners and operators can achieve timber harvest goals without sacrificing water quality or impairing the beneficial uses of the water.
- (5) The purposes of this part are:
- (a) to protect the legitimate public interest in the quality and quantity of forest waters;
 - (b) to provide for standards, oversight, rehabilitation, and penalties to ensure that forest practices are conducted in a manner that conserves the integrity of Montana's streamside zones;
 - (c) to provide guidelines for the management of wildlife habitat in streamside zones; and
 - (d) to allow operators necessary flexibility to use practices appropriate to site-specific conditions in the streamside management zone."

Responsible Agency: Department of Natural Resources and Conservation

Fertilizer Registration and Pesticide Regulation (Agricultural Chemicals)

80-8-103, MCA

The control of pesticides and their use is essential for the protection of man and his environment. Pesticides are currently considered valuable and necessary to provide sufficient quantity of quality foods and for the protection of humans from vector borne diseases. However, the protection of man and his essential needs--water, air, food, animals, vegetation, pollinating insects, and shelter from pesticides which are potentially dangerous--is in the public interest now and in the future. Therefore, it is deemed necessary to provide for the control of pesticides.

Responsible Agency: Department of Agriculture

Agricultural Chemical Ground Water Protection

80-15-103, MCA

"It is the public policy of this state to:

- (1) protect ground water and the environment from impairment or degradation due to the use of agricultural chemicals;
- (2) allow for the proper and correct use of agricultural chemicals;
- (3) provide for the management of agricultural chemicals to prevent, minimize, and mitigate their presence in ground water; and
- (4) provide for education and training of agricultural chemical applicators and the general public on ground water protection, agricultural chemical use, and the use of alternative agricultural methods."

Related Guidance: Other purposes likely include protecting the safety and welfare of applicators, adjacent owners, and general public.

Responsible Agency: Department of Agriculture

Mining

Geophysical Exploration

82-1-101, MCA et seq.

Staff assumes the purposes of this part include to conserve the structure and function of underground formations and to ensure the reclamation of surface lands. Rules of the board of oil and gas conservation must cover; adequate identification of seismic operating crews, designating areas where seismic exploration may be prohibited, and regulating the plugging and abandonment of seismic shot holes. The purpose of plugging shot holes is to contain any water within its native strata.

Related Guidance: Other sections in this chapter deal with False Mining Claims; Prospecting - Landowner Notification; Assaying of Ore; Smelters and Ore Shippers; and Coal Invoices.

Responsible Agency: Department of Environmental Quality

Strip and Underground Mining

82-4-102, MCA

"It is the policy of this state to provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources; . . . to satisfy the requirement of Article IX, section 2, of the constitution of this state, that all lands disturbed by the taking of natural resources be reclaimed; and . . . to insure that adequate information is available on areas proposed for strip mining or underground mining so that mining and reclamation plans may be properly formulated to accommodate areas that are suitable for strip mining or underground mining. . . . This part is deemed to be an exercise of the general police power to provide for the health and welfare of the people."

Responsible Agency: Department of Environmental Quality

Coal and Uranium Mine Reclamation

82-4-202, MCA

This section reiterates and expands upon constitutional and other goals related to environmental protection:

- "(a) maintain and improve the state's clean and healthful environment for present and future generations;
 - (b) protect its environmental life-support system from degradation;
 - (c) prevent unreasonable degradation of its natural resources;
 - (d) restore, enhance, and preserve its scenic, historic, archaeologic, scientific, cultural, and recreational sites;
 - (e) demand effective reclamation of all lands disturbed by the taking of natural resources and maintain state administration of the reclamation program;
 - (f) require the legislature to provide for proper administration and enforcement, create adequate remedies, and set effective requirements and standards (especially as to reclamation of disturbed lands) in order to achieve the aforementioned objectives; and
 - (g) provide for the orderly development of coal resources through strip or underground mining to assure the wise use of these resources and prevent the failure to conserve coal.
- (2)(a) to promote the health and welfare of the people, control erosion and pollution, protect domestic stock and wildlife, preserve agricultural and recreational productivity,

save cultural, historic, and aesthetic values, and assure a long-range dependable tax base .
... "

Responsible Agency: Department of Environmental Quality

Metal Mine Reclamation

82-4-301, MCA

"The extraction of mineral by mining is a basic and essential activity making an important contribution to the economy of the state and the nation. At the same time, proper reclamation of mined land and former exploration areas not brought to mining stage is necessary to prevent undesirable land and surface water conditions detrimental to the general welfare, health, safety, ecology, and property rights of the citizens of the state. Mining and exploration for minerals take place in diverse areas where geological, topographical, climatic, biological, and sociological conditions are significantly different, and reclamation specifications must vary accordingly.

It is not practical to extract minerals or explore for minerals required by our society without disturbing the surface or subsurface of the earth and without producing waste materials, and the very character of many types of mining operations precludes complete restoration of the land to its original condition. The legislature finds that land reclamation as provided in this part will allow exploration for and mining of valuable minerals while adequately providing for the subsequent beneficial use of the lands to be reclaimed."

Responsible Agency: Department of Environmental Quality

82-4-302, MCA

"The purposes of this part are to provide;

(a) that the usefulness, productivity, and scenic values of all lands and surface waters involved in mining and mining exploration within the boundaries and lawful jurisdiction of the state will receive the greatest reasonable degree of protection and reclamation to beneficial use;

(b) authority for cooperation between private and governmental entities in carrying this part into effect;

(c) for the recognition of the recreational and aesthetic values of land as a benefit to the state of Montana; and

(d) priorities and values to the aesthetics of our landscape, waters, and ground cover.

(2) Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific instance, the basic objective will be to establish, on a continuing basis, the vegetative cover, soil stability, water condition, and safety condition appropriate to any proposed subsequent use of the area."

Responsible Agency: Department of Environmental Quality

Opencut Mining

82-4-402, MCA

"It is the policy of this state to provide for the reclamation and conservation of land subjected to opencut mineral mining. Therefore, it is the purpose of this part to preserve natural resources, to aid in the protection of wildlife and aquatic resources, to safeguard

and reclaim through effective means and methods all agricultural, recreational, home, and industrial sites subjected to or which may be affected by opencut mineral mining to protect and perpetuate the taxable value of property, to protect scenic, scientific, historic, or other unique areas, and to promote the health, safety, and general welfare of the people of this state."

Responsible Agency: Department of Environmental Quality

Oil and Gas

82-11-101, MCA et seq.

Though this section primarily deals with which lands are subject to Title 82, it also notes the following objectives: "conservation of oil and gas and the prevention of waste"; "prevent contamination of or damage to surrounding land or underground strata"; "prohibit the waste of oil and/or gas"; "to prevent or to assist in preventing waste of oil"; "to avoid the drilling of unnecessary wells"; and to "protect correlative rights".

Responsible Agency: Department of Natural Resources and Conservation, Board of Oil and Gas Conservation

Water

Surface Water Use

85-2-101, MCA

"(1). . . the legislature declares that any use of water is a public use and that the waters within the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided in this chapter.

(2) A purpose of this chapter is to . . . provide for the administration, control, and regulation of water rights and establish a system of centralized records of all water rights." The intent of the system is to document, protect, preserve, and provide for future water use, and to complete the state water plan.

(3) It is the policy of this state and a purpose of this chapter to encourage the wise use of the state's water resources by making them available for appropriation . . . and to provide for the wise utilization, development, and conservation of the waters of the state for the maximum benefit of its people with the least possible degradation of the natural aquatic ecosystems. In pursuit of this policy, the state encourages the development of facilities which store and conserve waters for beneficial use, for the maximization of the use of those waters in Montana, for the stabilization of stream flows, and for ground water recharge.

(4) . . . it is further the policy of this state and a purpose of this chapter to recognize and confirm all existing rights to the use of any waters for any useful or beneficial purpose."

Responsible Agency: Department of Natural Resources and Conservation

Ground Water Use

85-2-505, MCA

"No ground water may be wasted. . . (A)ll wells producing waters which contaminate other waters (must) be plugged or capped. . . . The flow of water (from wells must) be stopped when the water is not being put to beneficial use. . . . (W)ells shall be so constructed and maintained as to prevent the waste, contamination, or pollution of ground water . . ." Some exceptions are noted that would not be considered "waste".

Responsible Agency: Department of Natural Resources and Conservation

Weather Modification

85-3-102, MCA

This section states the purpose of weather modification projects is to minimize danger to health, safety, welfare, or property and allows the Department of Natural Resources and Conservation to develop rules related to controlling such developments or projects.

Responsible Agency: Department of Natural Resources and Conservation

Irrigation Districts

85-7-101, MCA

"(2) Irrigation districts may be formed in order to cooperate with the United States under the federal reclamation laws . . . or under any act of congress which shall permit of the performance by the United States of work . . . for the purposes of construction of irrigation works, . . . or for purchase, extension, operation, or maintenance of constructed works or for the assumption . . . of indebtedness to the United States on account of district lands. . . ."

Related Guidance: Purposes for creation of irrigation districts on adjudicated water supplies (85-7-201) and supplies with rights-in-common (85-7-301) are: "the furtherance of public welfare, and effectiveness in the improvement, development, and maintenance" of certain irrigation systems where administration of them through a water commissioner is not effective.

Responsible Agency: Department of Natural Resources and Conservation

Dam Safety

85-15-115, MCA

The purpose related to this program appears to be to reduce existing and future threats to property and safety related to dams, and subsequently encourage new dam construction, if such dams are the best solution to water supply problems.

Related Guidance: MCA section 85-15-115 describes the benefits of dams and notes that "the state has a legitimate and compelling interest in encouraging the construction of dams that conform to the water storage policy provided in 85-1-703." The referenced section is from the Water Storage Policy Act,

intended to define the role of water storage in solving water management problems and, if water storage projects provide the best solutions to those problems, to facilitate the development of the projects.

Responsible Agency: Department of Natural Resources and Conservation

Wildlife Protection:

Licenses (all)

87-2-103, MCA

Licenses are used as a tool to carry out the powers and duties of DFWP, namely "supervis[ing] all the wildlife, fish, game, birds, . . . and game and fur-bearing animals of the state" and making expenditures and enforcing laws related to their "protection, preservation, and propagation."

Responsible Agency: Department of Fish, Wildlife & Parks

Rules and Regulations

87-3-101, MCA et seq.

It is likely the restrictions on the use of reproduced calls, the use of silencers, as well as restrictions on hunting with dogs and hunting from vehicles, aircraft or boats, are intended to maintain a certain level of "sport" in hunting, as well as guard against over harvest. An additional intent is to minimize "waste of fish or game."

Responsible Agency: Department of Fish, Wildlife & Parks

Game Animals

87-3-301, MCA et seq.

In addition to the intent expressed in 87-2-103, MCA staff assumes an other intent is to enhance safety for hunters and the general public. Another intent is to reduce trespass related to hunting.

Responsible Agency: Department of Fish, Wildlife & Parks

Importation, introduction, etc.

87-5-501, MCA

"It is hereby declared to be the policy of the state of Montana that its fish and wildlife resources and particularly the fishing waters within the state are to be protected and preserved to the end that they be available for all time, without change, in their natural existing state except as may be necessary and appropriate after due consideration of all factors involved."

Responsible Agency: Department of Fish, Wildlife & Parks

87-5-701, MCA

The purpose is to protect the native wildlife and plant species, and agricultural production of Montana.

Responsible Agency: Department of Fish, Wildlife & Parks

87-5-701, MCA

We assume the intent of this section is also to protect native wildlife, as it prohibits importation of salmonid fish or eggs, except under certain conditions.

Responsible Agency: Department of Fish, Wildlife & Parks

Commercial Activities**87-4-101, MCA et seq.**

The goal of all commercial licenses is to protect and preserve Montana's wildlife resource through regulations that allow, but monitor and control the sale, possession, and handling of wild animal species for personal profit and economic stimulus. The regulation and licensing of commercial use of captive and privately owned species of wildlife is intended to control the potential introduction and transmission of diseases and parasites, to help prevent the establishment of feral populations which could result in habitat damage or competition with or genetic pollution of native wildlife populations, and to ensure the safety of surrounding landowners when captive animals are shot. The Department administers the following licenses:

87-4-201, Taxidermist's license

87-4-301, Fur Dealer's license

87-4-406, Game Farm license

87-4-501, Shooting Preserve license

87-4-601, Fish Ponds, Seining, and Commercial Taking of Aquatic Fish Food
Organisms

87-4-801, Menagerie and Zoo license

87-4-901, Game Bird Farm license

87-4-1001, Fur Farm license

Responsible Agency: Department of Fish, Wildlife & Parks